

DATE

Brett P. Furr  
Taylor Porter  
450 Laurel Street, Suite 800  
Baton Rouge, Louisiana 70801

R. Gray Sexton  
Law Offices of R. Gray Sexton  
8680 Bluebonnet Boulevard, Suite D  
Baton Rouge, Louisiana 70810

Re: **Docket No. 2022-014**  
**Advisory Opinion**

Dear Mr. Furr and Mr. Sexton,

The Louisiana Board of Ethics, at its meeting on February 4, 2022, considered your request for an advisory opinion on behalf of Entergy Louisiana, LLC, Exxon Mobil Corporation, Georgia-Pacific Port Hudson LLC, and Baton Rouge Water Works Company as to the prohibitions imposed by the Code of Governmental Ethics (“Code”) on employees who may be appointed as members of the Capital Area Groundwater Conservation District Board of Commissioners in the future.

#### **FACTS PROVIDED**

The Capital Area Groundwater Conservation District (“District”) was created by the Louisiana Legislature through Act No. 678 of 1974 to provide for the efficient administration, conservation, orderly development, and supplementation of groundwater resources by the establishment of a groundwater conservation district composed of the parishes of Ascension, East Baton Rouge, East Feliciana, Pointe Coupee, West Baton Rouge, and West Feliciana. La. R.S. 38:3071. The District is governed by a Board of Commissioners (“District Board”) that administers the affairs of the District. La. R.S. 38:3072B. The District Board has the authority to do all things necessary to prevent waste of groundwater resources, and to prevent or alleviate damaging or potentially damaging subsidence of the land surface caused by withdrawal of groundwater within the District, to assess pumping charges against each user of groundwater within the District. La. R.S. 38:3076A. The District Board accomplishes this task by holding hearings, requiring permits and registrations, establishing standards for construction and use of wells, assessing fees, and enforcing reasonable rules and regulations. See La. R.S. 38:3076 and *La. Admin. Code* Title 56 §V-101 - 1113.

Pursuant to La. R.S. 38:3074, District Board members are appointed by the governor and confirmed by the Senate, in pertinent part as follows:

(2) Three members shall be appointed from nominations by the industrial users in the District.

(3) Three members shall be appointed from nominations by privately or publicly owned entities that furnish water for rural or municipal use within the District. One of the three members shall be from nominations by privately owned users furnishing a municipal water supply.

#### ENTERGY LOUISIANA, LLC

Entergy Louisiana, LLC (“Entergy”) has drilled wells in several aquifers under the jurisdiction of the District and uses the groundwater to operate its plants to provide electric and natural gas services to customers across the District. Entergy pays a fee to the District quarterly based on the volume of water used at its facilities. As such, Entergy is a regulated industrial user of groundwater within the District.

#### EXXON MOBIL CORPORATION

Exxon Mobil Corporation (“Exxon Mobil”) consists of a refinery and chemical plant in Baton Rouge. Exxon Mobil has drilled wells in several aquifers under the jurisdiction of the District and uses the groundwater to produce steam that heats up and cools down machinery at its facilities. Exxon Mobil also uses groundwater to provide its employees with drinking water. Exxon Mobil pays a fee to the District quarterly based on the volume of water used at its facilities. As such Exxon Mobil is a regulated industrial user of groundwater within the District.

#### GEORGIA-PACIFIC PORT HUDSON LLC

Georgia-Pacific Port Hudson LLC (“Georgia-Pacific”) operates a consumer products facility at Port Hudson in Zachary. Georgia-Pacific uses groundwater to operate its Port Hudson facility and to provide employees with drinking water. Georgia-Pacific pays a fee to the District quarterly based on the volume of water used at the Port Hudson facility. As such, Georgia-Pacific is a regulated industrial user of groundwater within the District.

#### BATON ROUGE WATER WORKS COMPANY

Baton Rouge Water Works Company (“BR Water”) is a privately owned entity that furnishes a municipal water supply within the District. BR Water operates 65 groundwater wells which are all under the jurisdiction of the District. The groundwater is collected from deep wells throughout the service area and transported by BR Water to its facilities. BR Water ensures that the water is safe for human consumption and delivers it to the Baton Rouge area on a continuous basis.

In accordance with La. R.S. 38:3079, payments are made quarterly to the District by BR Water for groundwater pumping charges. The District invoices BR Water quarterly for the amount of

groundwater pumped during the preceding three months. BR Water then collects payments from its customers, which are the amounts due to the District for their individual water usage and remits those funds to the District.

### ISSUE

Whether the Code prohibits appointed members of the District Board from receiving compensation for services rendered to Entergy, Exxon Mobil, Georgia-Pacific, and BR Water?

### LAW

It is essential to the proper operation of democratic government that public servants be independent and impartial. This is impaired when a conflict exists between the private interests of a public servant and his duties as such. La. R.S. 42:1101. In *In re Ark-La-Tex Antique and Classic Vehicles, Inc.*, 05-1931 (La. App. 1 Cir. 9/15/06), 943 So.2d 1169, the First Circuit Court of Appeal provided:

“Among the multiple policy objectives of the Code are impartiality, fairness and equality of treatment toward those dealing with government; assurance that decisions of public importance will not be influenced by private considerations; maintenance of public confidence in government; and prevention of use of public office for private gain. ... The primary objective of the Code is to prevent public officers and employees from becoming involved in conflicts of interests. A conflict of interest is a situation which would require an official to serve two masters, presenting a potential, rather than an actuality, of wrongdoing. The wrongdoing does not have to occur in order for a prohibited conflict to exist. A public official may have done no wrong in the ordinary sense of the word, but a conflict of interest may put him in danger of doing wrong. The Code is aimed at avoiding even this danger. For this purpose, the Code identifies certain types of conflicts of interests and prohibits conduct by public officials which would bring these conflicts into being. Additionally, the Code empowers the Board to determine when a conflict of interests exists and to impose certain sanctions.” Citing *Glazer v. Com'n on Ethics for Public Employees*, 431 So.2d 752, 755–56 (La. 1983).

To prevent any such conflict, La. R.S. 42:1111C(2)(d) provides:

No public servant, and no legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, shall receive any thing of economic value for or in consideration of services rendered, or to be rendered, to or for any person during his public service, unless such services are neither performed for nor compensated by any person from whom such public servant would be prohibited by R.S. 42:1115(A)(1) or (B) from receiving a gift.

La. R.S. 42:1115 provides, in pertinent part:

A. No public servant shall solicit or accept, directly or indirectly, any thing of economic value as a gift or gratuity from any person or from any officer, director, agent, or employee of such person, if such public servant knows or reasonably should know that such person:

(1) Has or is seeking to obtain contractual or other business or financial relationships with the public servant's agency;

B. No public employee shall solicit or accept, directly or indirectly, anything of economic value as a gift or gratuity from any person or from any officer, director, agent, or employee of such person, if such public employee knows or reasonably should know that such person:

(1) Conducts operations or activities which are regulated by the public employee's agency.

Additionally, La. R.S. 42:1117 provides that no public servant or other person shall give, pay, loan, transfer, or deliver or offer to give, pay, loan, transfer, or deliver, directly or indirectly, to any public servant or other person any thing of economic value which such public servant or other person would be prohibited from receiving by any provision of the Code.

#### ANALYSIS

The Board noted that the current language of La. R.S. 38:3074(2) and (3) does not expressly require that the nominee be an employee of either an industrial user or a municipal water supplier. Indeed, the Board has recognized in a prior opinion that any such entity has the ability to nominate individuals who are not providing compensated services to the entity. (See Board Docket No. 2019-755).

For this reason, industrial users of the District who have a contractual, business, or financial relationship with the District, or who are regulated by the District, including Entergy, Exxon Mobil, Georgia-Pacific, and BR Water would be considered prohibited sources of compensation for appointed members of the District Board. As such, R.S. 42:1111C(2)(d) prohibits an appointed member of the District Board from receiving compensation for services rendered to Entergy, Exxon Mobil, Georgia-Pacific, and BR Water.

Further, R.S. 42:1117 prohibits any such entity from making payments to the appointed District Board members, when those payments are prohibited under the Code.

#### CONCLUSION

The Board concluded, and instructed me to inform you, that R.S. 42:1111C(2)(d) prohibits appointed District Board members from receiving compensation for services rendered, or to be rendered, to industrial users of the District who have a contractual, business, or financial

relationship with the District, or to entities who are regulated by the District, including Entergy, Exxon Mobil, Georgia-Pacific, and BR Water. Further, R.S. 42:1117 prohibits any such entity from making payments to the appointed District Board member which are otherwise prohibited by the Code.

The Board noted that any future changes to the language of the District's enabling statutes, specifically La. R.S. 38:3074, may result in a different conclusion. In the event the Legislature changes these provisions, the Board suggested that you seek an updated advisory opinion.

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts as presented may result in a different application of the provisions of the Code of Governmental Ethics. Please note that the Louisiana Board of Ethics issues no opinion as to past conduct and that the Board's expressed opinion is limited to an examination of the Code of Governmental Ethics, the Campaign Finance Disclosure Act, the Lobbyist Disclosure Acts, and the conflict of interest provisions in the gaming laws.

If you have any questions, please contact me at (800) 842-6630 or (225) 219-5600.

Sincerely,

**LOUISIANA BOARD OF ETHICS**

---

David M. Bordelon  
For the Board

**DISCLAIMER**  
This is a draft opinion and it is **NOT** an opinion of the Louisiana Board of Ethics. No party may rely on the facts or conclusions. The analysis and conclusions herein are provided for discussion purposes only, and are subject to change or revision at the meeting of the Board of Ethics at which the matter is considered.